

No. 11-1431 RS

Matthew Siverly is liable for sales tax on proceeds from the rental of his boat docks to the customers of Westport Yacht Club from October 1, 2007 through September 30, 2010 (“tax period”).

On July 11, 2011, Siverly filed a complaint appealing the Director of Revenue’s (“the Director”) May 13, 2011 assessments of unpaid sales tax on the rental of his boat docks to customers of Westport Yacht Club during the tax period.¹ The Director filed an answer on July 21, 2011. On November 13, 2012, Siverly filed a first amended complaint, which the Director answered on December 11, 2012.

¹ Siverly simultaneously appealed assessments of use tax, but the Commission granted his motion to dismiss the appeal as to the use tax assessments on August 9, 2013.

This Commission convened a hearing on August 8, 2013. David A Yarger represented Siverly. Spencer A. Martin represented the Director.

The matter became ready for our decision on January 23, 2014, the date the last written argument was filed.

Findings of Fact

1. During the tax period, Siverly owned and operated the Westport Yacht Club in Gravois Mills, Missouri, situated on the Lake of the Ozarks.
2. Throughout the tax period, customers of Westport Yacht Club could pay rent for the right to dock a boat in a slip at the marina, where they had access to water, electricity, and cable television connections.
3. Other amenities at Westport Yacht Club were public restrooms, a snack bar, a fuel dock, a retail shop, and access to sales and service of marine equipment.
4. Most of the boat docks were situated on the property when Siverly took over the business in 1991.
5. During the tax period, there were a total of 11 boat docks on the property, which were divided into 165 slip spaces available for rent.
6. During Siverly's operation of the Westport Yacht Club, he replaced at least four of the docks by purchasing them from a dealer or from another marina and was not charged a separate sales tax on those purchases.
7. During the tax period, Siverly did not collect and remit sales tax on rental receipts from customers for use of the slips at the marina.

8. The Westport Yacht Club is situated in Morgan County, where the Assessor includes the value of Siverly's boat docks in his real property assessment and does not tax the docks as personal property.

9. After an audit, the Director determined that Siverly owed sales tax on the rental of boat slips at the marina from May 1, 2008 through September 30, 2010 and issued a final decision on May 13, 2011 charging him the overdue sales tax in the sum of \$35,873.96 plus interest.

Conclusions of Law

This Commission has jurisdiction over appeals from the Director's assessments.² Our duty is not merely to review the Director's decision, but to find the facts and to determine, by the application of existing law to those facts, the taxpayer's lawful tax liability for the period or transaction at issue.³ Siverly has the burden to prove that he is not liable for the amounts that the Director assessed.⁴

Missouri imposes a sales tax on the sellers of tangible personal property and services at retail in this state.

Section 144.020.1(8) provides:

1. A tax is hereby levied and imposed upon all sellers for the privilege of engaging in the business of selling tangible personal property or rendering taxable service at retail in this state. The rate of tax shall be as follows:

* * *

(8) A tax equivalent to four percent of the amount paid or charged for rental or lease of tangible personal property, provided that if the lessor or renter of any tangible personal property had previously purchased the property under the conditions of a "sale at retail" or leased or rented the property and the tax was paid at the time of purchase, lease or rental, the lessor, sublessor, renter or subrenter

²Section 621.050.1. Statutory references are to RSMo 2000, unless otherwise noted.

³*J.C. Nichols Co. v. Director of Revenue*, 796 S.W.2d 16, 20-21 (Mo. banc 1990).

⁴Sections 136.300.1 and 621.050.2.

shall not apply or collect the tax on the subsequent lease, sublease, rental or subrental receipts from that property[.]

Regulation 12 CSR 10-108.700 provides:

(1) In general, payments for the lease of tangible personal property are subject to tax unless the lessor paid tax on the purchase of the property. Payments for the lease of tangible personal property are exempt from tax if the sale of the tangible personal property would be exempt.

* * *

(3) Basic Application of the Tax.

(A) When a lessor purchases tangible personal property for the purpose of leasing, the lessor may pay tax on the purchase price or claim a resale exemption based on the intended lease of the tangible personal property.

1. If the lessor pays tax on the purchase price, the subsequent lease of the tangible personal property is not subject to tax.

Siverly's primary contention is that the boat docks are not personal property and therefore not the kind of property for which he is required to collect and remit tax when renting. He argues that the docks have become part of the real estate, and that they should be considered fixtures, by virtue of the way they have been connected to the ground. In support of this view, Siverly presented the testimony and records of the Morgan County Assessor, whose historical approach has been to include the value of the docks into assessment of the adjoining real estate for purposes of ad valorem property taxation. We are not persuaded that this interpretation of existing law should govern our analysis in that it seems contrary to the legislative intent embodied in the plain language of Missouri's tax statutes.

Specifically, the authority to treat floating boat docks as personal property for property tax purposes is found in § 137.090,⁵ entitled **Tangible personal property to be assessed in county of owner’s residence – exceptions – apportionment of assessment of tractors and trailers**, which provides:

1. All tangible personal property of whatever nature and character situate in a county other than the one in which the owner resides shall be assessed in the county where the owner resides; except that, houseboats, cabin cruisers, floating boat docks, and manufactured homes, as defined in section 700.010, used for lodging shall be assessed in the county where they are located

(Emphasis added.) Additionally, floating docks are specifically excluded from the statutory definition of commercial real estate under § 137.016.1(3), which states:

As used in section 4(b) of article X of the Missouri Constitution, the following terms mean:

* * *

“Utility, industrial, commercial, railroad and other real property”, all real property used directly for any commercial, mining, industrial, manufacturing, trade, professional, business, or similar purpose, including all property centrally assessed by the state tax commission but **shall not include floating docks**, portions of which are separately owned and the remainder of which is designated for common ownership and in which no one person or business entity owns more than five individual units.

(Emphasis added.)

Siverly correctly points out that a 2009 amendment added the following provisions to the definitions section in what is now known as the “Missouri Certified and Licensed Real Estate Appraisers and Appraisal Management Company Regulation Act,” which is found in § 339.503:⁶

⁵ RSMo Cum. Supp. 2013. The 2013 amendment added a second paragraph dealing exclusively with tractors and trailers and does not affect our analysis.

⁶ RSMo Cum. Supp. 2013.

Definitions. – As used in sections 339.500 to 339.549, the following words and phrases mean, unless the context clearly indicates otherwise:

* * *

(12) “**Boat dock**”, a structure for loading and unloading boats and connecting real property to water, public or private. A boat dock is real property and has riparian rights, provided:

(a) The lender includes the boat dock as a fixture both in the lender’s deed of trust and a uniform commercial code fixture filing under section 400.9-502;

(b) The boat dock is attached to the real property by steel cable, bar, or chain that is permanently embedded in concrete or rock, and otherwise securely attached to the dock; and

(c) The owner of the dock has riparian rights by means of real estate rights bordering the body of water, including such rights by license, grant, or other means allowing access to the body of water, which access may be seasonal because the water may be reduced for electric power production or flood control[.]

We are not persuaded that this addition was meant as a fundamental change in the legislature’s view of boat docks for purposes of taxation. Rather, we are to assume the legislature was aware of the existing provisions in Chapter 137 and that the abstinence from any related change to that chapter was deliberate. While the amendment codified one element of the practice of real estate appraisal in Missouri, we cannot infer any intent for a corresponding change in the taxation and revenue context when doing so would be contrary to the plain language found there.

Similarly, we decline to extend Siverly’s argument that the boat docks are fixtures for purposes of obviating liability for sales tax on the rental of his personal property. Accepting such a legal fiction would ignore the plain language found in the tax statutes. The cases and analysis urged upon this Commission to support this interpretation of the evidence before us comes primarily from the realm of contract law where the intent of the parties is a fundamental part of the inquiry. The law of taxation is not grounded in subjective intent for obvious reasons. Moreover, we do not accept that adaptation of floating boat docks occurs to any appreciable

degree when Siverly has presented evidence that these docks are easily replaceable when they are worn out or damaged and that such exchanges of old property for newer equipment can be accomplished without significant injury to either the real estate or the chattels.

While admitting no sales tax was collected on slip rentals, Siverly makes a secondary argument that he was not required to collect and remit the tax because there is evidence to suggest he did pay sales tax on one replacement dock.⁷ Alternatively, he argues he was not required to pay sales tax on docks he purchased from Broken Arrow, another marina that has gone out of business, because that sale was an exempt transaction. Section 144.020.1(8) and 12 CSR 10-108.700 each provide lessors of personal property with a choice between paying sales tax when they buy personal property or collecting and remitting sales tax when they rent the property thereafter. Having provided no evidence on this issue, we find that Siverly has not met his burden of proof in this regard.

We do not perceive insurmountable dissonance between treating boat docks as appurtenances to real property in the appraisal context but classifying them as personal property for tax purposes. While the availability of floating docks, pilings, and connections to electricity, potable water, and other services tends to add to the value of the appurtenant real estate by making it useful for leisure and sport boating, the docks themselves are easily replaced. It is much more logical that a real estate appraiser examine what, if any, adaptations have been made to real property in order to secure floating docks than for the Director to have to make such determinations on a case-by-case basis.

⁷ The Director's Exhibit C contains the phrase, "tax included" in place of a dollar amount for the tax but is denominated a proposal. Evidence of payment appears on the second page of the exhibit, which lists additional equipment but contains no reference to sales tax.

It is clear that Westport Yacht Club regularly engaged in the business of renting out its personal property, upon which Siverly did not elect to pay sales tax at acquisition, but did not collect and remit sales tax on those rentals. It is incumbent upon this Commission to do what the law requires of the Director under the circumstances found at hearing.⁸ We must, therefore, find that Siverly has not paid the required sales tax.

Interest

Section 144.170 imposes interest on delinquent sales tax and use tax, as calculated by § 32.065. Therefore, Siverly shall be liable for this statutory interest on his delinquent sales tax for the periods at issue.

Summary

Siverly is liable for sales tax on the receipts from the rental of his boat docks at the Westport Yacht Club in the amount of \$35,873.96, plus interest.

SO ORDERED on May 13, 2014.

\s\ Sreenivasa Rao Dandamudi
SREENIVASA RAO DANDAMUDI
Commissioner

⁸ *J.C. Nichols Co. v. Director of Revenue* at 20-21.